

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAWN HARRIS,

No C 08-5348 VRW

Plaintiff,

ORDER

v

ALAMEDA COUNTY MEDICAL CENTER,
JEANETTE LOUDEN-CORBETT, in her
individual capacity, and DOES 1
through 15,

Defendant.

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The court is in receipt of defendants' statement of non-opposition to the court's tentative order regarding plaintiff's due process claim. Doc #77; see also Doc #74, Appx A. The court therefore ADOPTS in its entirety its tentative ruling, below, and DIRECTS the clerk to close administratively the above-captioned file.

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1 For the reasons stated in the court's order GRANTING IN
2 PART and DENYING IN PART defendants' motion for summary judgment,
3 Doc #74, the court, sua sponte, GRANTS summary judgment to
4 plaintiff on her due process claim.

5 The Ninth Circuit and "the Supreme Court have repeatedly
6 held that the appropriate remedy for deprivation of a liberty
7 and/or property interest without due process is to order the
8 process that was due and any attendant damages which directly
9 resulted from the failure to give the proper procedure." Brady v
10 Gebbie, 859 F2d 1543, 1551 (9th Cir 1988). Federal courts,
11 therefore, have ordered government entities to provide employees
12 with evidentiary hearings if the employees were denied these
13 hearings in violation of their due process rights. See Parker v
14 Yuba County Water Dist, 2009 US Dist LEXIS 29176, *2 (ED Cal);
15 Levine v City of Alameda, 2006 US Dist LEXIS 2285, *20-21 (ND Cal)
16 (Breyer, J).

17 With respect to monetary damages, the Supreme Court has
18 stated that the purpose of damages for procedural due process
19 violations "should be to compensate persons for injuries that are
20 caused by the deprivation of constitutional rights." Carey v
21 Piphus, 435 US 247, 253-54 (1978). In considering what injuries
22 are caused by deprivation of procedural due process, the Court
23 noted that "[p]rocedural due process rules are meant to protect
24 persons not from the deprivation, but from the mistaken or
25 unjustified deprivation of life, liberty, or property." *Id* at 259.
26 The Court concluded, then, that a party who suffered a violation of
27 her procedural due process rights may only recover damages flowing
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1 from a loss of a liberty or property interest if the deprivation of
2 that interest was unjustified. *Id* at 261.¹ If, however, the
3 deprivation was justified, a party's damages are limited to mental
4 and emotional distress caused by the denial of due process and
5 nominal damages because the cause of the deprivation was not a
6 violation of the party's due process rights. *Id*. Moreover, the
7 Court stated that mental and emotional distress is not presumed to
8 flow from a denial of due process. *Id* at 262.

9 Since Harris was denied her right to a full evidentiary
10 hearing, the court ORDERS the process that she was due: a full
11 evidentiary hearing before a neutral third party, with ACMC to bear
12 the costs. See Parker, 2009 US Dist LEXIS 29176 at 2; Levine, 2006
13 US Dist LEXIS 2285 at 20-21. Since ACMC staff may arguably be
14 biased against Harris as a product of this litigation, ACMC must
15 provide a neutral third-party to preside over Harris's hearing.
16 See Levine, 2006 US Dist LEXIS 2285 at 21. Additionally, Harris is
17 entitled to declaratory judgment that ACMC violated her
18 constitutional due process rights. See *id*.

19 To determine what other relief Harris may pursue based on
20 her procedural due process claim, the court must first determine
21 whether her termination was justified. Carey, 435 US at 261.
22 Since the court is ordering a full evidentiary hearing before a
23 neutral party addressing precisely this topic, the court DIRECTS
24 the docket clerk to CLOSE the file administratively pending the
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26 ¹ See also Jones v Los Angeles Cmty College Dist, 702 F2d 203,
27 207 (9th Cir 1983) ("Since [plaintiff's] dismissal was upheld in the
28 evidentiary hearing, she may not recover for injuries relating to her
loss of employment."); Vanelli v Reynolds Sch Dist No 7, 667 F2d 773,
781 (9th Cir 1982) (holding that plaintiff could not recover for lost
employment benefits when her termination was justified).

1 outcome of Harris's evidentiary hearing. See Parker, 2009 US Dist
2 LEXIS 29176 at *3-5.

3 Within thirty (30) days of Harris's evidentiary hearing,
4 the parties are ORDERED to notify the docket clerk to reopen the
5 file. Additionally, the parties shall submit a joint case
6 management statement summarizing the evidentiary hearing, its
7 procedures and resolution. The parties shall attach thereto any
8 written or transcribed decision in the matter. At that time, the
9 court will then either grant judgment in favor of defendants or
10 schedule and conduct further proceedings as necessary to establish
11 plaintiff's damages.

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13 IT IS SO ORDERED.



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15 VAUGHN R WALKER
16 United States District Chief Judge
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